

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1357V

Filed: January 24, 2023

UNPUBLISHED

TRACY MURRAY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA); Cause-in-  
Fact

*Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.*

*Austin Egan, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

On September 27, 2017, Tracy Murray filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”). (ECF No. 1)

On October 27, 2022, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On January 23, 2023, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$90,000.00 for pain and suffering and \$7,839.11 representing satisfaction of the State of Maine Medicaid lien. (ECF No. 66, p. 2.) In the Proffer, respondent represented that petitioner agrees with the proffered award. (*Id.*) Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award petitioner the following:**

- **a lump sum payment of \$90,000.00 for pain and suffering in the form of a check payable to petitioner; and**
- **a lump sum payment of \$7,839.11, representing compensation for the satisfaction of the State of Maine Medicaid lien, payable jointly to the petitioner and to:**

Treasurer, State of Maine - tax ID 016000001  
Synergy Settlement Services  
2420 S Lakemont Ave, Ste 160  
Orlando, FL 32814  
Re: Tracy Murray  
Attention: Kelly S. Kramer

Petitioner agrees to endorse this payment to Treasurer, State of Maine.

These amounts represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Daniel T. Horner**  
Daniel T. Horner  
Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

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TRACY MURRAY,

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) ECF  
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**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

On June 17, 2021, petitioner filed a Motion for a Ruling on the Record (“Motion”) arguing that she has established entitlement to compensation for a shoulder injury related to vaccine administration (“SIRVA”) within the Table timeframe following an October 12, 2016 flu vaccination, or, in the alternative, that she suffered a shoulder injury that was caused in fact by the vaccination. ECF No. 53. Respondent filed his Response to petitioner’s Motion on September 22, 2021, recommending that entitlement to compensation be denied, and petitioner filed a Reply on November 8, 2021. ECF Nos. 56-57. On October 27, 2022, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation.<sup>1</sup> ECF No. 59.

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<sup>1</sup> Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Special Master’s October 27, 2022, entitlement decision.

## **I. Items of Compensation**

### **A. Pain and Suffering**

Based on the evidence of record, respondent proffers that petitioner should be awarded **\$90,000.00** in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

### **B. Medicaid Lien**

Respondent further proffers that petitioner, Tracy Murray, should be awarded funds to satisfy, in full, the State of Maine Medicaid lien in the amount of **\$7,839.11**, which represents satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Maine may have against any individual as a result of any Medicaid payments the State of Maine has made to or on behalf of Tracy Murray from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury, under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

## **II. Form of the Award**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through two lump sum payments as described below, and requests that the Chief Special Master's damages decision and the Court's judgment award the following:<sup>2</sup>

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<sup>2</sup> Should petitioner die prior to the entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

(A) Petitioner's Damages

A lump sum payment of **\$90,000.00** for pain and suffering in the form of a check payable to petitioner.

(B) Medicaid Lien

A lump sum payment of **\$7,839.11**, representing compensation for satisfaction of the State of Maine Medicaid lien, payable jointly to petitioner and to:

Treasurer, State of Maine - tax ID 016000001  
Synergy Settlement Services  
2420 S Lakemont Ave, Ste 160  
Orlando, FL 32814  
Re: Tracy Murray  
Attention: Kelly S. Kramer

Petitioner agrees to endorse this payment to Treasurer, State of Maine.

**III. Summary of Recommended Payments**

- |  |             |
|--|-------------|
| a. Lump sum payment to petitioner, Tracy Murray:   | \$90,000.00 |
| b. Lump sum payment payable jointly to petitioner<br>and Treasurer, State of Maine in satisfaction of<br>the Medicaid Lien | \$7,839.11  |

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO  
Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

TRACI R. PATTON  
Assistant Director  
Torts Branch, Civil Division

/s/ AUSTIN J. EGAN  
Austin J. Egan  
Trial Attorney  
Torts Branch, Civil Division  
U.S. Department of Justice  
P.O. Box 146, Ben Franklin Station  
Washington, DC 20044-0146  
Tel: (202) 451-7479  
Austin.J.Egan@usdoj.gov

Date: January 23, 2023